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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

SEAN COTTLE, et al.,

Plaintiff,

vs.

DOUG GILLESPIE, et al.,

Defendants.

Case No. 2:10-CV-00271-JCM-(PAL)

ORDER

Presently before the court is pro se plaintiff Sean Cottle's motion to reargue the court's order (doc. #79) dismissing plaintiff's case in part by dismissing defendant Gillespie and other defendant officers in their official capacities (doc. # 69). Defendants have responded. (Doc. #80). Plaintiff did not file a reply.

On July 6, 2011, the court entered an order granting in part and denying in part defendants' motion to dismiss (doc. #69). The court dismissed any claims asserted against Officers Halasi and O'Daniel in their official capacities, under the doctrine of sovereign immunity, because suing an officer in his or her official capacity is equivalent to suing a governmental or municipal entity itself. *See* July 6, 2011 order, Doc. #69 (citing *Kentucky v. Graham*, 473 U.S. 159 (1985)). In addition, the court dismissed claims against Gillespie in his official capacity because the claims against Gillespie were duplicative of the plaintiff's claims against LVMPD. *Id.* (citing *Scott v. Las Vegas Metro Police Dep't.*, 2:10-CV-01900-ECR, 2011 WL 2295178 (D. Nev. June 8, 2011)). Further, the court dismissed claims against Gillespie in his individual capacity because plaintiff failed to allege any

1 personal involvement by Gillespie in plaintiff's arrest or incarceration, or that Gillespie had
2 negligently trained or supervised the officers. *See id.*

3 On July 18, 2011, plaintiff filed a motion to reconsider the July 6, 2011, order. (Doc. #70).
4 On July 25, 2011, prior to this court's ruling on the motion to reconsider, plaintiff filed a notice of
5 appeal, seeking review of the July 6, 2011, order by the Ninth Circuit Court of Appeals. On
6 September 7, 2011, the court entered an order denying plaintiff's motion to reconsider because the
7 plaintiff's appeal divested the court of jurisdiction to reconsider the July 6, 2011, order. (Doc. #78).
8 On October 18, 2011, the court granted plaintiff's motion seeking to voluntarily withdraw his
9 appeal. (Doc #82). Thus, the court will look at the instant motion as a renewed motion to reconsider
10 because this court now has jurisdiction.

11 "Reconsideration is appropriate if the district court (1) is presented with newly discovered
12 evidence, (2) committed clear error or the initial decision was manifestly unjust, or (3) if there is an
13 intervening change in controlling law." *School Dist. No. 1J v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th
14 Cir. 1993); *see* Fed. R. Civ. P. 59(e); *see also* Fed. R. Civ. P. 60(b). Furthermore, review of
15 dismissal for failure to state a claim is limited to the contents of the complaint. *Sprewell v. Golden*
16 *State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001).

17 The plaintiff fails to present any new law, new facts, or new evidence indicating that any of
18 the circumstances enumerated by the Ninth Circuit are present here. In the present motion for
19 reconsideration, plaintiff asks this court to reconsider its order (doc. #69), because Gillespie, must
20 be held accountable for the conduct of his subordinates. Plaintiff, however, has failed to provide any
21 basis for this court to reconsider its previous order. Accordingly, this court must again deny the
22 motion to reconsider.

23 Therefore,

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1 IT IS HEREBY ORDERED ADJUDGED AND DECREED that plaintiff Sean Cottle's
2 motion to reargue (doc. #79) be, and the same hereby is, DENIED.

3 DATED October 25, 2011.

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5 JAMES C. MAHAN
6 United States District Judge

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